



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 20, 2022

IN THE MATTER OF:

Appeal Board No. 624835

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the employer. By decision filed July 07, 2022 (), the Administrative Law Judge sustained the Commissioner of Labor's timeliness objection, overruled the employer's objection, and continued in effect the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The initial determination dated May 6, 2022 was mailed to the employer. The employer received the determination on May 13, 2022. Included therein were instructions that if the employer disagreed with the determination, the employer had a right to a hearing but must request it within thirty days from the date the determination was mailed. By letter postmarked June 7, 2022, the employer requested a hearing.

OPINION: The credible evidence establishes that the employer's request for a hearing was timely. Pursuant to the regulations of the Appeal Board, a hearing request is deemed to be timely if made within thirty days of the date of receipt of the determination (12 NYCRR § 461.1). As the employer received the initial determination on May 13, 2022, it had until June 13, 2022 (a Monday), to request a hearing in a timely manner. As the employer's hearing request was postmarked June 7, 2022, the employer's hearing request was timely made. Accordingly, we conclude that the timeliness objection is overruled and the employer is entitled to a decision on the merits.

Our review of the record, however, reveals that the case should be remanded to hold a hearing on the employer's objection that the claimant should not be eligible for benefits on the basis that the claimant lost her job due to misconduct, as testimony and evidence was not taken on this issue. The parties should have another opportunity to submit additional testimony and other evidence on the issues.

DECISION: The decision of the Administrative Law Judge, insofar as it sustained the Commissioner of Labor timeliness objection, is reversed.

The Commissioner of Labor's timeliness objection is overruled.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of eligibility and the employer's objection of misconduct only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the

remanded issue s only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER